

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x -----

PHOEBE BERG, TOSHIRO KIDA, JOHN RIVERA,  
DAYNA ROZENTAL and JOHNATHAN JETTER,  
individually and on behalf of a class of all others similarly  
situated,

**NOTICE OF MOTION**

12 CV 3391 (TPG) (GWG)

Plaintiffs,

-against-

NEW YORK CITY POLICE COMMISSIONER  
RAYMOND KELLY; CHIEF OF NEW YORK CITY  
POLICE DEPARTMENT JOSEPH ESPOSITO; NEW  
YORK CITY POLICE DEPARTMENT  
OFFICERS/SERGEANTS YESENIA AYALA, Sh. No.  
13587; BRENDA BATCHER, Sh. No. 18825;  
MATTHEW BETTING, Sh. No. 12343; CYNTHIA  
BOYLE, Sh. No. 6663; STEPHEN CAROLAN, Sh. No.  
6693; MICHAEL CASALE, Sh. No. 30092;  
CHRISTOPHER CLARK, Sh. No. 30815; NATHAN  
COLLINS, Sh. No. 11773; FRANCISCO COSTA, Sh. No.  
20660; JESSE COTTON, Sh. No. 1178; CHRIS DEFEO,  
Sh. No. 19936; JOSEPH DIAZ, Sh. No. 4744; THANYA  
DUHANEY, Shield No. 5584; JEANETTE FIUEROU, Sh.  
No. 6040; DEBORAH GARBUTT, Sh. No. 29583;  
JAMES GATTO, Sh. No. 27905; MATTHEW  
GRESSWELL, Sh. No. 10994; STEPHEN MAZZARD,  
Sh. No. 31071; MICHAEL RODER, Sh. No. 25253;  
DOUGLAS SHEEHAN, Sh. No. 26759; DIXON SU, Sh.  
No. 7680; PETER VOLAIRE, Sh. No. 27518; JOHN  
DOES 1-10 (whose identities are currently unknown but  
who are known to be police officers and/or supervisory  
personnel of the New York City Police Department); in  
their individual and official capacities,

Defendants.

----- x -----

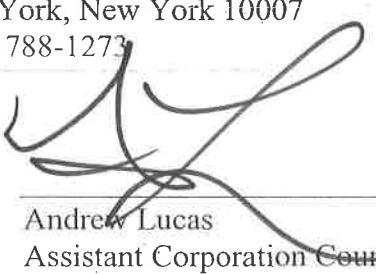
**PLEASE TAKE NOTICE** that upon the Declaration of Andrew Lucas, dated March 6, 2013, the exhibits annexed thereto, the accompanying Memorandum of Law, dated March 6, 2013, and all pleadings and proceedings previously had herein, defendants will move before the Honorable Thomas P. Griesa on March 6, 2013, at the United States Courthouse for the Southern District of New York, located at 500 Pearl Street, New York, New York for an Order pursuant to Fed. R. Civ. P. 12(c) to dismiss the complaint against defendants for plaintiff's failure to state a claim upon which relief can be granted, and for such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, counsel for all parties request the motion be submitted as fully briefed by April 26, 2013 or subject to the convenience of the court. Defendants further request that the Court stay discovery during the pendency of this motion.

Dated:           New York, New York  
                  March 6, 2013

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
*Attorney for Defendants*  
100 Church Street  
New York, New York 10007  
(212) 788-1273

By:

  
Andrew Lucas  
Assistant Corporation Counsel  
Special Federal Litigation Division

TO: Honorable Thomas P. Griesa  
United States District Judge  
500 Pearl Street  
New York, New York 10007

Honorable Gabriel W. Gorenstein  
United States Magistrate Judge  
500 Pearl Street  
New York, New York 10007

Rankin and Taylor  
David Rankin  
11 Park Place, Suite 914  
New York, NY 10007

**DECLARATION OF SERVICE BY MAIL**

I, ANDREW LUCAS, declare, pursuant to 28 U.S.C. §1746, under penalty of perjury that on **March 6, 2013**, I caused to be served the annexed **1) Notice of Motion and Supporting Declaration and 2) Memorandum of Law in Support of Defendant's Motion to Dismiss** upon the following Plaintiff by electronic filing and depositing a copy of same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to said plaintiff's counsel at the address set forth below, being the address designated by said plaintiff and the Court for that purpose:

Rankin and Taylor  
David Rankin  
11 Park Place, Suite 914  
New York, NY 10007

Dated:           New York, New York  
                  March 6, 2013



---

ANDREW LUCAS  
ASSISTANT CORPORATION COUNSEL